

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Adam Grant Smith,

Civil No. 10-2931 JNE/AJB

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Michael J. Astrue,  
Commissioner of Social Security,

Defendant.

Plaintiff Adam Grant Smith filed his *pro se* complaint in this matter on July 6, 2010, alleging that he had been improperly denied disability and/or supplemental security benefits. His application to proceed *in forma pauperis* was granted and summons were issued for service by the U.S. Marshal's Office. The summons and complaint were served on the U.S. Attorney for the District of Minnesota on July 27, 2010. Pursuant to Local Rule 7.2(a), the answer and administrative transcript are due to be served and filed on or about September 27, 2010. The answer and transcript have not been filed to date. On July 12, 2010, the plaintiff filed a motion for protective order, therein asking that his VA medical history file be kept under seal. On September 8, 2010, plaintiff Adam Smith filed a motion for voluntary dismissal of the action, concisely stating that he wanted "to drop or stop the case because 'I would like to.'"

Pursuant to Fed. R. Civ. P. 41(a)(1)(I), a plaintiff may voluntarily dismiss an action by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Rule 41(a)(B) provides that such dismissal shall be without prejudice unless otherwise stated. The defendant Commissioner has not answered or filed a motion for summary judgment in this case and there has been no request that the dismissal be

with prejudice.

Now therefore, the magistrate judge makes the following:

### **RECOMMENDATION**

It is **hereby recommended** that plaintiff Adam Grant Smith's motion to dismiss be **granted** [Docket No. 7], and that this matter be **dismissed without prejudice** pursuant to plaintiff's request for voluntary dismissal under Rule 41(a)(1). It is **further recommended** that plaintiff's motion for protective order be **denied as moot** [Docket No. 4].

Dated: September 13, 2010

s/Arthur J. Boylan  
Arthur J. Boylan  
United States Chief Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before September 27, 2010.